

### **Remarks**

Claims 37-56 are pending. Claims 48 and 49 have been allowed; claims 37-47 and 50-56 stand rejected; and claim 41 has been objected to as being of improper dependent form.

Applicants have amended claim 41 and file herewith a terminal disclaimer in compliance with 37 CFR 1.321(c). Applicants request entry of this amendment and reconsideration of the application.

### **Rejections under Non-Statutory Obviousness-type Double Patenting**

Claims 37-47 have been rejected under the judicially created doctrine of obviousness-type double patenting as being not patentably distinct from and, therefore, unpatentable over claims 1-20 and 23 of US Patent No. 6,623,920.

Claims 50-56 have been rejected under the judicially created doctrine of obviousness-type double patenting as being not patentably distinct from and, therefore, unpatentable over claims 24-31 and 33-38 of US Patent No. 6,623,920.

Applicants have enclosed with this response a terminal disclaimer in compliance with 37 CFR 1.321(c) and 37 CFR 1.321(b), which should overcome this rejection. Therefore, Applicants respectfully request allowance of claims 37-47 and 50-56.

### **Claim Objection**

Claim 41 has been objected to as being in improper form because it was dependent upon itself. Applicants thank the Examiner for his careful consideration of the claims.

Applicants have amended claim 41 to depend from claim 40, thus correcting the form for a proper dependent claim. Therefore, Applicants request reconsideration and allowance of claim 41.

Application No. 10/632,658  
Confirmation No. 3579  
Atty. Docket No. GP103-03.DV1

**AMENDMENT**  
Art Unit: 1634  
Examiner: Ethan C. Whisenant

### **Conclusion**

In view of the amendment to claim 41, the foregoing remarks, and the enclosed Terminal Disclaimer, Applicants respectfully submit that the application is in condition for allowance. Accordingly, withdrawal of the rejections and allowance of the application is earnestly solicited. Applicants have made a good-faith effort to address all the points raised in this Office action and to place the claims in condition for allowance. If minor matters remain that could be resolved by a telephone interview, the Examiner is invited to contact Applicants' representative at the number shown below.

### **Fee Authorization**

Authorization is hereby provided to debit any required fees associated with this response from Deposit Account No. 07-0835, in the name of Gen-Probe Incorporated.

### **Certificate of Mailing**

I hereby certify that this correspondence (along with any referred to as attached or enclosed) is being deposited on the date indicated below with the US Postal Service in an envelope addressed to Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Respectfully Submitted,

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